

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Sean O'Connor,

Case No. 2:22-cv-00846-JAD-NJK

Plaintiff

v.

Mrs. Froby, et al.

**Order Dismissing
and Closing Case**

Defendants

Plaintiff Sean O'Connor brings this civil-rights lawsuit to redress constitutional violations that he claims he suffered while he was incarcerated at Southern Desert Correctional Center. On July 8, 2022, this court instructed O'Connor to file an amended complaint and either pay the \$402 filing fee for a civil action or file a new, fully complete application to proceed *in forma pauperis* (IFP) by August 7, 2022.¹ The court warned him that this case would be dismissed if he failed to comply by the deadline.² O'Connor neither filed an amended complaint by the deadline nor moved for an extension of time to do so. And he has not paid the filing fee or filed a new IFP application.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order.³ In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to

¹ ECF No. 6.

² *Id.* at 9.

³ *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
2 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁴

3 The first two factors, the public's interest in expeditiously resolving this litigation and the
4 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
6 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
7 ordered by the court or prosecuting an action.⁵ The fourth factor—the public policy favoring
8 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
10 to correct the party's failure that brought about the court's need to consider dismissal.⁶ Courts
11 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
12 explore possible and meaningful alternatives."⁷ Because this action cannot proceed until and
13 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting
14 another deadline. But the reality of repeating an ignored order is that it often only delays the
15 inevitable and squanders finite resources along the way. The circumstances here do not indicate
16 that this case will be an exception: there is no hint that O'Connor needs additional time nor
17 evidence that he did not receive the court's order. Setting another deadline is not a meaningful
18 alternative given these circumstances. So the fifth factor favors dismissal.

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20 ⁴ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
21 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

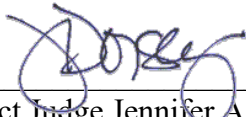
22 ⁵ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 ⁶ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
accord Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002).

⁷ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
2 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to
3 follow a court order. The Clerk of Court is directed to **ENTER JUDGMENT** accordingly and
4 **CLOSE THIS CASE. No other documents may be filed in this now-closed case.**

5 Dated: September 12, 2022

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8 U.S. District Judge Jennifer A. Dorsey
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